

**IN THE MATTER OF THE
VOLUNTARY ARBITRATION
BETWEEN**

EASTERN MICHIGAN UNIVERSITY,

Employer,

-and-

Gr. No. 2017-01

THE EASTERN MICHIGAN CHAPTER
OF THE AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

Association.

ARBITRATION OPINION AND AWARD

APPEARANCES

Nicholas Roumel
Nacht & Roumel, P.C.
101 N. Main Street
Suite 555
Ann Arbor, MI 48104

Craig S. Schwartz
Butzel Long PC
Stoneridge West
41000 Woodward Ave.,
Bloomfield Hills, MI 48304

ISSUES

I

IS THE GRIEVANCE TIMELY?

II

DOES EASTERN MICHIGAN UNIVERSITY'S
AGREEMENT WITH ACADEMIC PARTNERSHIPS
VIOLATE THE SHARED GOVERNANCE
PROVISIONS OF THE CONTRACT, AND
IF SO, WHAT SHOULD BE THE REMEDY?

On November 28, 2016 Eastern Michigan University (EMU) and Academic Partnerships (AP) entered into a Service Agreement relative to EMU's online programs. The College Advisory Committee (CAC) grieved on February 10, 2017, asserting that the AP Agreement was entered into without full input from the faculty in the areas of Curriculum Development, Personnel and Instruction. The grievance states:

FACTS:

On December 22, 2016, Eastern Michigan University issued a press release announcing an agreement with a private company. Academic Partnerships (AP), to provide various services to the University relating to online degree programs currently being offered by the University and others anticipated in the future. Pursuant to an information request filed by EMU-AAUP, the Association received a copy of the agreement between the University and AP on January 12, 2017.

The EMU-AAUP Agreement provides that Faculty have a contractual right to meaningful input/involvement in matters regarding the selection and evaluation of Faculty Members, curriculum development, and utilization of financial resources. The EMU-AAUP Agreement also provides for a system by which faculty may give input in the areas of personnel, instruction, and finance at the College level.

Several programs identified in Addendum A of the AP contract involve curriculum that is offered by departments/schools in the College of Arts and Sciences. These include “Bachelor of General Studies - Criminology, “Bachelor of General Studies - Applied Communication,” and Bachelor of General Studies - Foundations of Psychology.” In addition, the inclusion of the Bachelor of General Studies degree in the AP contract substantially impacts the General Education Program over 90% of the courses within which are taught by faculty in the programs of the College of Arts & Sciences.

Despite these facts, the University entered into the AP agreement without the input or even awareness of the College of Arts and Sciences College Advisory Committee (CAC). Whereas the CAC, which is comprised of bargaining unit members, is the representative body of faculty in the CAS, this is a clear violation of the collective bargaining agreement.

On February 2, 2017, the CAC voted unanimously (16-0-0 to authorize CAC Chair Peter Higgins to grieve on behalf of the CAC on the basis of this violation of the collective bargaining agreement.

For a remedy, the Association asked for a moratorium on the implementation of the Service Agreement and for meaningful input by the Association. It wrote:

REMEDIES:

1. The EMU administration shall publicly acknowledge this violation of the contract in a letter to the CAC. The letter shall be signed by the President, Provost, all administrative professionals under the direction of the Provost, and all administrators who have responsibility for this matter.
2. A moratorium on implementation of the AP contract.
3. To facilitate meaningful input, the EMU administration will work with faculty during the moratorium to conduct an impact analysis for each program in the College of Arts and Sciences on the effect of the Academic Partnerships contract. An impact analysis for each program in the College is necessary due to the potential breadth of the Bachelor of General Studies degree included the Online Programs listed in the AP contract. The analysis will include evidence-based forecasters of how the implementation of the AP contract will impact:

- The number of majors in the each program and department/school.
- The financial well-being and stability of each program and department/school.
- The instructional budget and instructional resources of each program and department/school.
- The delivery of instruction in each program and department/school.
- The attainment of learning goals of each program.
- The integrity and operations of the General Education Program and CAS courses within it.
- The alumni perceptions of EMU and the value of their EMU degree.
- The learning environment (on campus, hybrid, or online) of EMU students.
- Retention and graduation of students in CAS programs.
- The overall financial well-being of the university with details on the marketing budget and how involvement with AP will affect it.

4. Once these analyses are complete, the CAC will provide input on the AP contract in relation to its impacts on any and all CAS programs, following established input procedures. In addition to program- and department/school-level input, the input of the CAC shall be sought prior to the initiation of any online programs in which AP is involved that contain the courses of CAS programs, departments, or schools.

5. Faculty in specific CAS programs will maintain the option to refuse any form of involvement with Academic Partnerships.

6. The EMU administration shall provide in writing a guarantee that faculty who choose to reach courses in programs implicated in any arrangements with AP retain full ownership in and control over all aspects of instruction of these courses. AP shall not intervene, even by way of offering recommendations, in faculty decision-making concerning instruction of their courses.

The University interposed a time limits defense to the grievance in its answer on March 14, 2017. It further asserted that faculty input was not required for AP's services, which were directed at marketing of programs, recruitment of students and technical support. The University said:

Without waiving its objection to the timeliness, however, the University responds to the merits of the grievance as follows:

Lack of Evidence

To date, the only action taken by the University with respect to Academic Partnerships has been the execution of a service agreement. There has been no other action taken pursuant to the relationship. There has been no marketing, recruitment, support of existing programs or new programs. The agreement simply provides that to the extent the University decides to launch the programs contained on Addendum A that Academic Partnerships will support them. It does not require that each program will be initiated. To the extent Academic Partnerships will provide support, the programs supported by Academic Partnerships will not launch until September 2017 at the earliest. Accordingly, no input is required at this stage regardless of the nature of the contemplated activity.

There is no evidence cited in the grievance that any action has been taken to replace faculty or other work groups, or that any such action has been considered. It is simply not part of the Academic Partnerships contract.

Input

Regardless of the stage/implementation of the relationship with Academic Partnerships, no input is required for most of the services contemplated by the Academic Partnerships Agreement - recruitment of students, marketing of programs, technical support, etc. Those matters are not covered by the EMU-AAUP Collective Bargaining Agreement, so even if Academic Partnerships were actively engaged at this point, our collective bargaining agreement is not implicated.

Addendum A of the Academic Partnerships contract does not include a list of programs that currently exist in the form stated; some may never be placed online; others may not even exist at this time. Addendum A merely provides that Academic Partnerships has the right of first refusal to market, provide support, and share in the revenue of any programs to the extent that they *may* be offered in the future, but only after being thoroughly vetted through the contractual input process.

Marketing and program support are not mandatory subject for input, and are not within the professional responsibilities delegated to faculty with the collective bargaining agreement.

In addition, it is important to note that the College of Arts and Sciences College Advisory Council does not provide input on the Bachelor of General Studies degree program.

Where required for new or existing courses in the College of Arts and Sciences, meaningful input will be solicited in accordance with the specific provisions of the CBA. As we move forward, we will comply with all provisions of the collective bargaining agreement and will most certainly give faculty an opportunity to provide input where required by the collective bargaining agreement.

The grievance is denied.

Arbitration hearings were held on October 11 and November 3, 2017. Testifying for the Association were: Dr. Judith Kullberg, President, EMU-AAUP; Dr. Tom Kovacs, CAC Member and Dr. Katherine Riker, CAC Member. Testifying for the University were: Kevin Kucera, Vice President, Enrollment Management and Recruitment; Dr. Rhonda Longworth, Provost and Executive Vice President for Academic and Student Affairs and Dr. David Woike, Assistant Vice President for Academic Affairs. Post-hearing briefs were submitted.

BACKGROUND

The agreement with AP services EMU’s online course offerings. The agreement lists AP’s obligations as follows:

SERVICE AGREEMENT

* * *

Recitals Incorporated Into Agreement

* * *

C. Subject to the terms and conditions set forth herein, the University desire to engage AP to provide such services with regard to the mutually agreed to courses, degree programs and other programs (as set forth in the attached Addendum[s]) (jointly called **Online Programs** and inclusive of all prerequisite and co-requisite courses) (participants in Online Programs are **Students**).

I. AP Obligations

AP shall have the following obligations, which it shall fulfill through its own efforts as well as through efforts of its agents and affiliates:

A. **Marketing, Recruiting, and Promotion.** AP shall be the exclusive third-party marketer of the Online Programs and will market the University and its Online Programs using a variety of means as determined by AP. A marketing plan will be presented to the University at least annually, and the University shall review and approve said plan. AP will then operate under the approved marketing for the coming year. Quarterly, the Parties will update the marketing plans, as necessary.

B. **Program Development, Support and Implementation.** AP's implementation team will work with the University to launch the University's Online Programs. AP's implementation support services will include:

- (1) an integration team that works with the University's personnel from key departments;
- (2) facilitation of various operational planning sessions for Online Programs;
- (3) development of a "Program Guidelines" document
- (4) cross-functional project management services, including development of a project plan to drive program implementation activities.

C. **Academic Support Services.** AP will work with faculty and the University on Online Programs' design, including but not limited to:

- (1) assistance with program-level planning, course mapping, and course conversion of Online Programs into an electronic format;
- (2) assisting University in structuring multiple annual start dates; and

- (3) introducing best practices for the delivery of Online Programs.

D. Enrollment Specialist Representatives (ESRs).

ESRs will serve as a primary point of contact for all prospective Students for the Online Programs. The ESRs will help educate Students about the Online Programs. AP's responsibilities include:

- (1) staffing and equipping a call center for ESRs;
- (2) providing a team of ESRs to contact potential Students;
- (3) providing a toll free number and website for prospective Students;
- (4) recruiting in compliance with the academic standards of the University and regulatory requirements; and
- (5) informing potential Students of the Program characteristics and referring potential Students to the University regarding financial aid and/or academic questions. In performing recruiting activities, ESRs shall use such marketing and promotional materials as deemed appropriate by AP and as are provided by or approved by the University in accordance with this Agreement, and AP is entitled to rely on the accuracy of any such materials.

AP agrees that in the course of recruitment of Students for enrollment in one or more Online Programs it will not provide any commission, bonus or other incentive payments based directly or indirectly upon success in securing enrollments to any person or entity directly engaged in any Student recruiting or admission activities except in accordance with the provisions of 34 C.F.R. 668.14(b)(22)(2003) and any subsequent amendment thereto, and/or any other requirement of the United States Department of Education or the University's regional accreditor.

- E. Application Support.** In addition to recruiting, ESRs will:

- (1) inform applicants of University application requirements;
- (2) contact applicants regarding upcoming Online Programs' deadlines;
- (3) remind applicants to submit necessary paperwork (transcripts, etc.);
- (4) remind Students of the registration process, registration deadlines and payment deadlines once admitted to the University; and
- (5) refer Students to appropriate University resources if there are further questions about the Program(s).

F. **Student Support Services.** ESRs will provide Student support and retention services, including, but not limited to the following:

- (1) following up with Students periodically through graduation;
- (2) referring Students to University resources if academic questions persist;
- (3) welcoming new students and providing upcoming registration dates and/or deadlines;
- (4) re-engaging inactive Students; and
- (5) reminding Students of upcoming start dates, registration deadlines and payment deadlines.

Attached to the Service Agreement is Addendum A, which states in part:

ADDENDUM A

The Addendum A (Addendum) dates as of September 1, 2016, is a supplement to that certain Service Agreement (Agreement) dated as of September 1, 2016, between Academic Partnerships, LLC (AP), and Eastern Michigan University (the University) and is fully incorporated therein.

A. **Addition of Online Programs**

The following programs and/or degrees are designated as "Online Programs" in accordance with the

Agreement. All projected launch dates are estimates for Launch Dates of the particular Online Program. The Parties acknowledge that the actual Launch Date may vary slightly from the projection due to varying implementation requirements.

PROJECTED AND/OR DEGREE (ONLINE PROGRAMS)	PROJECTED LAUNCH DATES	AP REVENUE PERCENTAGE
Nursing Programs		
RN-BSN*	Summer 1 2017*	47%
MSN Educator	Fall 1 2017	50%
RN-MSN Educator	Summer 1 2017	50%
Education Programs		
M.Ed. Leadership*	Summer 1 2017*	50%*
M.Ed. C&I	Summer 1 2017	50%
Business Programs		
MBA-General	Fall 1 2017	50%
MBA-Marketing	Fall 1 2017	50%
MBA-International Business	Fall 1 2017	50%
MBA-Supply Chain Management	Fall 1 2017	50%
Bachelor Programs		
Bachelor of General Studies	Fall 2 2017	50%
Bachelor of General Studies-Criminology	Fall 2 2017	50%
Bachelor of General Studies - Applied Communication	Fall 2 2017	50%
Bachelor of General Studies - Marketing Principles	Fall 2 2017	50%

*The University has existing enrollments in the RN-BSN and M.Ed. Leadership Online Programs as of the Effective Date of this Addendum (the Existing Enrollments). The University wishes to service those Existing Enrollments outside of the Agreement. As such, AP will not provide services to the Existing Enrollments, and AP will not receive any compensation for the Existing Enrollments. Additionally, for clarity, the University will ensure that Existing

Enrollments will not appear on any student rosters or other data files sent to AP.

In April of 2017, Addendum A was amended in regard to the Bachelor of General Studies.

The Amendment said:

**AMENDMENT 1
TO THE
SERVICE AGREEMENT**

* * *

It is agreed as follows:

A. An asterisk (*) is hereby added to the “Bachelor of General Studies” Online Program identified in Addendum A with the following clarifying language inserted at the end of Addendum A:

* Several academic areas are listed under the Bachelor of General Studies (BGS) program on Addendum A of the Contract. As a point of clarification, students must work with an advisor to create an academic schedule in order to design a plan of study for their BGS degree. These areas listed in Addendum A do not constitute separate programs and do not preclude students from taking courses in these or other areas not listed if classes are available.

* * *

The outgoing president of the EMU-AAUP, Dr. Susan Moeller, wrote on December 31, 2016 regarding the AP Service Agreement:

Finally, the new leadership recently in an email to you stated that the old leadership is responsible for a marketing contract with a company that promotes on line programs. While this just happened and no faculty had complained to us about the contract, there has been no contract violation as the five departments receiving the help gave input on it and do not have to use the company. However, the new leadership needs to realize that some faculty may want their programs

marketed and that the unions (sic) job is to protect the contract and its processes. There can not be a grievance if there is no contract violation and no grievant faculty member.

Previously, on December 22, 2016, Dr. Kullberg, the incoming AAUP president wrote:

...Indeed, we learned just yesterday that the EMU administration has signed a five-year contract with Academic Partnerships, a for-profit company, to deliver entire EMU degree programs online, and that this decision was made with little or even no faculty input. We will thus actively begin to exercise our responsibility of enforcing the contract on January 2, the very first business day of the new year.

Also on December 22, EMU issued a press release as follows:

Eastern Michigan University to significantly expand online learning opportunities for students

Ypsilanti - Eastern Michigan University has agreed to partner with Academic Partnerships (AP) to launch several current degree programs in online and accelerated formats. Eastern Michigan University is fully responsible for the development and delivery of the academic product, which will be provided by Eastern Michigan University faculty and lecturers, while AP is responsible for promoting the programs and recruiting students.

The program builds on Eastern's successful online RN2BSN (Registered Nurse to Bachelor of Science in Nursing) program, launched in summer 2015 and fully managed by the University. Eastern's RN2BSN program has been named one of the best 50 online programs in the country.

The RN2BSN program is an accelerated eight-week program with six starts through the year. Approximately 35 students are currently enrolled in the program. The agreement with Academic Partnerships will allow the University to further expand the program, while utilizing what was learned to launch the new programs.

The first four programs to be implemented through the partnership are:

- RN2BSN
- Master's in Educational Leadership

- Master's in Curriculum and Instruction
- Bachelor of General Studies (degree completion)

Other programs will be phased in gradually over time once more comprehensive discussions, planning and input has occurred with Eastern faculty members.

Academic Partnerships is the industry leader in partnerships with public universities to bring distance learning degree programs in accelerated formats to scale, with more than 40 university partnerships across the nation. Its partnerships include institutions such as: The University of Texas system, the University of South Carolina System, UCLA, Baylor, USC, Notre Dame and Louisiana State University.

The contract can be viewed by visiting this link (<http://true.mu/2jkGfSD>).

Vice President for Enrollment Management Kevin Kucera said, “Partnering with Academic Partnerships allows Eastern effective access into the online marketplace. Significant opportunities exist to better serve students in the distance learning market as more students are seeking online options to complete degree programs.

“Academic Partnerships will help us grow the RN2BSN program in an efficient manner, enabling Eastern to concentrate on academic program delivery. Over the next several months, in a structure that allows for Eastern’s academic delivery systems to adjust and prepare for the programs and to work constructively with our faculty, Eastern will launch the remaining programs. Eastern will go from a small presence to a significant Midwest regional presence in the distance learning market.”

From a financial perspective, current students enrolled in the RNSBSN program and any new enrollments for the new cycles beginning in January and March will provide 100 percent revenue to EMU for the duration of the program. Following the March cycle, when the Academic Partnerships agreement begins, Eastern will receive more than 50 percent of the revenue generated from enrollment brought in by Academic Partnerships.

Kucera said, “It takes significant capital to bring distance learning programs to the marketplace. Academic Partnerships will provide all

of the financial support to market and recruit students to the programs.”

AP’s marketing efforts include extensive pay per click campaigns, publications, signage (including billboards), and staff to go out in the field to recruit prospective students. All of these expenses are the responsibility of Academic Partnerships.

Kucera added, “To launch multiple programs, and attempt to ring them to scale would not have been feasible financially or procedurally. Partnering with AP enables Eastern to concentrate on academic quality and delivery, while allowing third-party partner with extensive experience in the online arena, to help us enroll more students in the programs.”

Dr. Kullberg testified that she heard about the AP Agreement on Michigan radio, but that the semester was completed. She said that she requested a copy of the AP contract from the University, but did not receive one until January 12, 2017.

Dr. Kullberg explained that the faculty is responsible for providing input on curriculum under the terms of the collective bargaining agreement, but that it was not consulted before the AP Agreement was signed. She contends that AP is performing functions related to curriculum, which is work that belongs to the faculty and requires faculty input.

Dr. Kullberg said that when she heard about the AP contract on Michigan radio, she did not immediately file a grievance because if AP was involved in marketing only, there would be no basis for a protest. Once the contract with AP was reviewed, Dr. Kullberg said that it was determined that a basis for a grievance existed. Dr. Kullberg said that she did not go to the link found in the University press release to view the contract with AP.

Online education existed at EMU prior to the contract with AP. The faculty senate approved a Bachelor of General Studies degree in 2015.

Dr. Kullberg stated that paragraphs B, C, E, and F of the Service Agreement are objectionable.

Dr. Tom Kovacs of the CAC testified that the CAC was not consulted before the AP contract was signed. Dr. Katherine Riker, an Earth Sciences professor and a member of the CAC, said that there was no input from faculty before the General Studies degree was listed in the AP contract. She said that she expected to have input before her classes were put online.

The vice president of Enrollment Management and Recruitment, Kevin Kucera, testified that the contract with AP was designed to facilitate the marketing of EMU's online programs, which had previously existed. He noted that there has been a decline in University enrollment, and that long-distance learning would hopefully benefit the University.

Mr. Kucera testified that AP does not make curriculum decisions; neither does it decide who teaches online courses. He added that EMU pays other vendors for student recruitment, and that faculty input has not been sought for these contracts.

Mr. Kucera said that a boilerplate contract was signed with AP, with AP's role limited to marketing and recruitment. He stated that since the contract was signed, AP's role has remained limited to marketing and recruitment. He notes that AP maintains a call center and is paid per click online.

Mr. Kucera said that an online RN2BSN degree was instituted online prior to the AP contract. He also said that a BA in General Studies existed online prior to the AP contract.

Mr. Kucera testified that AP did not create new programs for EMU, but rather only marketed existing ones. Regarding Addendum "A", Mr. Kucera said that it promotes the marketing of programs. He further stated that the list of courses in the Addendum represents existing course offerings.

Mr. Kucera maintains that a BA in General Studies existed prior to the AP Agreement. He notes that there was also an individualized study program, which could include criminal courses or psychology.

Mr. Kucera said that the amendment to Appendix A was designed to clarify that the Bachelor of General Studies was an existing program.

On October 17, 2017, AP taught a workshop at EMU. They were invited by a department head. Attendance for the faculty was voluntary.

Mr. Kucera said that AP does nothing in the classroom. He adds that there has been greater student participation since the AP contract, and that an additional faculty member has been hired.

Mr. Kucera said that the Bachelor of General Studies, the MA in Educational Leadership and the RN2BSN existed prior to the AP contract, and that these programs did not change once the agreement with AP was reached.

The provost, Rhonda Longworth, testified that faculty input was initially obtained in 2015 before the BGS degree was implemented. She further said that a precursor to the BGS, the Individualized Study Plan (ISP), was first introduced in 1975.

Provost Longworth said that the BGS curriculum was 100% online prior to the AP contract, and that the curriculum did not change after the AP contract was signed. She cited the cases of two students who obtained BGS degrees online prior to the AP Agreement.

Dr. Longworth said that there was no need for faculty input, and therefore she denied the grievance. She further said that if a new or modified online course occurred, faculty input would be sought.

Dr. Longworth said that the BGS is a set of courses, but is not a major. She said that a clarification of Appendix A was sought in the amendment.

Dr. Longworth testified that in regard to the October 2017 AP workshop, faculty input was not required because the workshop was voluntary.

Dr. David Woike, the assistant vice president for Academic Affairs, represented the University in the grievance process. He contends that the grievance is time-barred, because it was not submitted within 20 working days as required by the contract. Dr. Woike notes that the press release dated December 22, 2016 had a link to the AP contract, yet the grievance was not submitted until February 17, 2017. This is said to represent 29 working days, which makes the grievance untimely.

Dr. Kullberg testified that she learned for the first time at the arbitration hearing that there was an amendment to the Appendix.

PERTINENT CONTRACT PROVISIONS AND MATERIALS

ARTICLE VII. GRIEVANCE PROCEDURE

* * *

94 D. Procedure and Time Limits: Initiation

95 Either a Faculty Member or group of Faculty Members may initiate a grievance by serving signed written notice of it at Step One to the Department Head or other designated administrative agent. Such notice shall concisely state the facts upon which the grievance is based, the provisions of the Agreement which have been violated, and specify the relief and remedy sought. Notice shall be filed within twenty (20) working days after the Association or the Faculty Member(s) on whose behalf the grievance is filed became aware, or reasonably should have become

aware, of the action complained of. If no notice is served in that time, the grievance is barred. In no event will monetary adjustment of a grievance cover a period prior to ninety (90) working days before filing of written notice of the grievance.

* * *

84 B. Construction

* * *

92. 5. Failure to initiate any grievance within the time limits specified herein on the part of the Association or the grievant(s) shall bar further proceeding of the grievance. Failure to appeal any grievance within the time limits specified herein on the part of the Association or the grievant(s) shall cause the grievance to be resolved on the basis of the last administrative decision concerning the matter(s) at issue and bar further processing of the grievance. Unless extended by mutual consent of the parties' representatives at the respective steps of the grievance procedure, the time limits specified herein shall be the maximum time allowed. Failure to comply with the time limits on the part of any administrative agent shall permit the grievance to proceed to the next step.

* * *

ARTICLE XIII: FACULTY PARTICIPATION IN GOVERNANCE

- 418 A. Recognizing the necessity for meaningful Faculty involvement in the areas of selection and evaluation of Faculty Members, curriculum development, and utilization of financial resources, the following procedures for the involvement of Faculty shall be used. Fundamentally, what is desirable and intended by the sections that follow is to ensure mindful participation by the Faculty with the ultimate decision-making resting in Eastern Michigan University management, but with an assurance of procedural regularity and fair play. Furthermore, as

Faculty Members provide input to those responsible for managing the University, likewise, decisions shall be communicated in a timely manner to the Faculty input bodies that provided input. Faculty input bodies may request a written response to their input. Such response shall be provided within fifteen (15) days. Any dissenting decision to input shall be supported by reasoning and evidence.

419 B. Department and College Committees

- 420 1. There shall be in each department, college or division, including University Library, a system providing for Faculty input in the areas of personnel, instruction, and finance. By way of illustration, Faculty may utilize the input pertaining to the academics credentials and professional qualification of instructional staff, Faculty teaching assignments, teaching overload policies, class size, override policies, teaching load equivalencies and departmental budget development.

* * *

224 3. Online and Hybrid Instruction

- 225 a. Online and hybrid classes will be approved using the department input procedures as set forth in Article XIII. On-line and hybrid classes are taught through the academic departments with assured operational support provided by the University.
- 226 b. On-line and hybrid classes will be considered regular on-campus classes for the purposes of faculty assignment and payment.
- 227 c. Faculty Members who develop an on-line class retain all rights of ownership of the materials so developed. At the

Faculty Member's option, he/she may sign over the on-line class materials to EMU. Faculty Members will receive no stipends to develop courses or grading stipends to each more students than allowed by the course cap.

228 d. Permission of the Faculty Member will be obtained before entering an online or hybrid class for any purpose other than technical support. EMU will not access or facilitate access by others for online or hybrid classes for purposes of evaluating faculty performance or activity, except in accordance with Article XV.

229 e. The student evaluation process of on-line courses shall follow the process and instrument for on-campus courses appropriately modified for courses delivered on-line.

230 f. The student evaluation process of hybrid courses shall follow the process and instrument for on-campus on-line.

* * *

422 3. Departmental and College Input Documents shall include the following information:

* * *

426 d. the process for replacement or recall of Faculty elected to committee service.

427 e. the process for searching for, screening and recommending Department Head candidates to the dean.

- 428 f. the process for carrying out the Department Head evaluation as provided for in Article XV.
- 429 g. the manner in which Faculty Members serving as coordinators/directors will provide appropriate faculty input in making recommendations to the Department Head,
- 430 h. process for review of the Input Document every five (5) years.
- 431 i. Process for Faculty input on new Faculty hires, including the prioritization of requests for new Faculty hires, the selection of Faculty members to service on search committees for hiring new Faculty, and evaluation of candidates for new Faculty positions;
- 432 j. process for Faculty Summer teaching assignments.

* * *

111 1. Procedure and Time Limits: Arbitrator's Decision and Award

112 The arbitrator shall have no power to add to, subtract from, or modify the terms of this Agreement, nor shall he/she exercise any responsibility or function of EMU or the Association. This is not intended to restrict the authority of the arbitrator to the determination of issues of procedural compliance only, and he/she shall have authority to determine substantive questions properly presented in accordance with the terms of the Grievance Procedure. The decision of the arbitrator shall be final and binding on both parties and may be enforced in any court of competent jurisdiction. The parties to this Agreement shall bear their expenses individually and share the arbitrator's fee and expenses equally.

COLLEGE OF ARTS AND SCIENCES

COLLEGE LEVEL FACULTY INPUT SYSTEM

(Amended February 2013)

I. Statement of Purpose

The current agreement between Eastern Michigan University and the Eastern Michigan University Chapter of the American Association of University Professors recognizes the necessity for meaningful faculty involvement in the areas of selection and evaluation of faculty members, curriculum development, and utilization of financial resources. It therefore requires a system providing for faculty input in each department and college in the areas of Personnel, Instruction, and Finance. This document establishes such a system, advisory to the Dean, for input at the college level in the College of Arts and Sciences.

* * *

A. Responsibilities

1. Instructional

- a. To review all changes and new proposals for departmental status, curricula, majors, minors, courses, and interdisciplinary programs in the College and to submit its recommendations to the Dean.

* * *

Letter of Agreement Dated April 12, 2013

“The CAS . . . dea[n] will seek official input on all new or revised college policies, metrics, procedures or CAC bylaws changes that affect CAS faculty teaching, research and service activities (such as academic credentials and professional qualifications of instructional staff, Faculty teaching assignments, teaching overload policies, class size, override policies, teaching load equivalencies, and departmental budget development pursuant to MP 418 of the Master Agreement.

The CAS dea[n] agree[s] to follow the CAC input document and the EMU-AAUP Contract in the future.”

CAC Input Documentation - Instructional Responsibilities

(a) To review all changes and new proposals for...curricula, majors, minors, courses, and interdisciplinary programs in the college and to submit its recommendations to the Dean.

* * *

(c) To monitor the General Education Program and its effects on the College and review all proposed changes in the program, with the submission of its recommendations.

The CAC’ input document also recognizes that curricular matters may affect more than one college, thus it includes among its responsibilities:

(d) To insure liaison between the departments of the College and between colleges regarding academic programs and courses.

Faculty Senate Bylaws

...it “...shall act as the representative voice of the EMU faculty in academic matters that affect more than one college... “Areas of Joint Responsibility/Determining General Education Policy – Advise the Administration and Regents on matters such as proposed changes in the size or composition of the student body and relative emphasis to be given to various elements of the education and research program ... Advise in framing and execution of long range plans ... university budget and resource issues.

Course & Program Development Handbook

”Before changes in the curriculum can occur, faculty input must be obtained.”

The document further states, “The CPD process allows for functional coordination of curricular development ... an orderly method whereby proposals to modify EMU courses and programs can proceed from conception to implementation...”

POSITION OF THE UNIVERSITY

It is asserted that the AP Agreement, “in no way...represented a ‘change’ in the curriculum; or in any academic program; thereby necessitating an obligation for faculty input.” EMU argues that the AP Service Agreement did not:

- Establish any new courses;
- Bring any additional courses onto an on-line format;
- Institute any new degree programs or even degree concentrations;
- Change in any way the academic requirements for receipt of an EMU degree;
- Change in any way the teaching assignments or teaching autonomy of EMU/AAUP-represented faculty;
- Change or reduce the length of courses during an academic semester;
- Reduce faculty teaching opportunities in any way through a transfer or “subcontracting” of teaching duties to personnel employed by Academic Partnership.

AP’s activities are argued to be limited to marketing and student recruitment, which the Association agrees do not require faculty input. Relative to the charge that the on-line BGS program required faculty input, it is asserted that the BGS program predated the AP contract, both as a BGS program and as an individualized study program. It is emphasized that the BGS program existed 100% on-line prior to the AP contract.

The University further contends that the grievance is untimely, since it was not submitted within 20 working days of when the Union was aware or should have been aware of the AP contract. It is noted that the press release, with an email link to the AP contract, was sent to all faculty on

December 22, 2016. Further, it is asserted that Dr. Kullberg sent an email on December 22 stating that she intended to enforce the contract starting on the first business day of the new year. Additionally, it is argued that the prior president sent out an email on December 31, indicating that the AP contract was not a violation of the collective bargaining agreement. The grievance filed on February 20, 2017 is said to have been outside of the 20 working day window, and therefore the grievance must be dismissed under the express terms of the collective bargaining agreement.

The amendment to the AP Service Agreement is argued to show that the Addendum was never intended to create new courses. Also, it is argued that the training workshop was voluntary for faculty. The University argues that the BGS degree is not within the purview of the CAC, but rather the University senate.

The University contends that faculty input was sought before the BGS degree was created in 2015. It is further maintained that the AP Agreement limits AP's functions to marketing, recruitment and promotion, while reserving academic and curriculum control to the University.

EMU argues that Appendix A did not commit it to offer new courses, and it emphasizes that there has never been a major within the BGS format. The amendment is said to have clarified any confusion.

The University argues that the prior Association president admitted that there was no contract violation. The University further maintains:

D. There Have Been No Curriculum Changes Requiring Faculty Input Since the AP Service Agreement was Entered

It was not rebutted by the Association at the hearing that the University did not bring any additional courses on-line after the AP Service Agreement was signed. Nor did EMU change the length or content of any on-line course. The University never adopted a

Bachelor of General Studies degree with a specific “major” in Applied Communication, Foundations of Psychology or Criminology, nor any other new on-line degree or program. This is confirmed in Employer’s Ex. 1, a list of program offerings from the University’s website. As explained by the University’s witnesses, the AP Service Agreement has not resulted in any curriculum or academic changes at all.

It is argued in regard to the BGS program, AP is only marketing a program that has already been 100% online.

EMU contends that Vice President Kucera explained that AP’s “carousel model”, which involves the use of coaches and teaching assistants at other academic institutions, was a model that EMU chose to reject.

POSITION OF THE ASSOCIATION

The Association contends that the AP Service Agreement for long-distance learning, and 100% online learning, violates the Shared Governance provisions of the collective bargaining agreement.

Programs listed in Appendix A are said to require faculty input. Further, paragraphs B, C, D, E and F are said to represent violations absent faculty input.

The University, after signing the AP Agreement, is argued to have engaged in changes to the curriculum, including promoting students to design their own curriculum programs. Also, the October 27, 2017 AP workshop from AP is asserted to have violated the contract.

Mr. Kucera, it is maintained, improperly presented AP as only a marketing entity.

The use of a 100% online degree is argued to be unprecedented, and the existence of two students who previously obtained online degrees does not change that conclusion, according to the

Association. Further, the collective bargaining agreement is said to require faculty input under the circumstances of this case. The past practice of the parties is also argued to require faculty input.

The Association denies that its prior president bound the Association by her farewell statement. Additionally, it is maintained that the grievance is timely. It is noted that working days are required for the computation of time limits. The Association contends that Dr. Kullberg heard about the AP contract on Michigan radio, sought a copy of the contract from the University on January 4, 2017, and received it on January 12. The grievance, according to the Association, was then filed within the required 20 working days.

It is argued that Dr. Kullberg did not immediately file a grievance because the CAC had not had an opportunity to review the AP contract. The Association emphasizes that Dr. Kullberg did not become aware of the circumstances of a potential grievance until she actually received a copy of the contract from the University.

The Association argues that the University has not been prejudiced by a delay in the filing of the grievance. It is further maintained that EMU is responsible for significant delays itself.

The grievance is also argued to be timely as a continuing grievance insofar as more than a one-time violation is involved.

The 2013 settlements are argued to be without effect. It is noted that these settlements were to be non-precedential.

DISCUSSION

IS THE GRIEVANCE TIMELY?

The contract requires a grievance to be filed within 20 working days of when the Association or a faculty member became aware, or reasonably should have become aware, of a grievable event.

Dr. Kullberg, the incoming AAUP president, emailed her colleagues on December 22, 2016:

Indeed, we learned just yesterday that the EMU administration has signed a five-year contract with Academic Partnerships, a for-profit company, to deliver entire EMU degree programs online, and that this decision was made with little or even no faculty input. We will thus actively begin to exercise our responsibility of enforcing the contract on January 2, the every first business day of the new year.

The University considers this communication, along with the press release regarding the AP contract, as starting the clock for the filing of a grievance. The grievance in this case is argued to be untimely, because it was filed more than 20 working days from December 22. The Association contends that the clock began only when the University mailed a copy of the contract to the Association on January 12.

The AP Service Agreement was not formerly sent to the Association until January 12. There was apparently no difference between the contract that was sent to the Association and the one that existed in a link that was provided to the faculty in the press release on December 22. However, there is no indication that the University advised the Association, when it received a request for a copy of the contract on January 2, that the Association already had access to a valid copy of the contract through the email link. This could have caused the Association to delay filing a grievance until it received an authenticated copy of the AP Service Agreement.

Elkouri and Elkouri state in *How Arbitration Works*, BNA 8th Ed, 5-33:

But when there are ambiguities...or uncertainty as to whether time limits have been met, all doubts should be resolved against forfeiture of the right to process the grievance.

Under the particular circumstances of this case, the grievance should be considered in arbitration.

DOES THE AP SERVICE AGREEMENT VIOLATE THE
SHARED GOVERNANCE PROVISIONS OF THE CONTRACT?

The Association contends that the AP Service Agreement improperly impinges on curriculum and other areas requiring faculty input as part of the Shared Governance Provisions of the CBA; the University argues that the AP Service Agreement is simply designed to market online courses that already exist, and that therefore faculty input is not necessary.

The initial focus is appropriately on Appendix A to the AP Service Agreement. I can understand that the Association would believe that new programs requiring faculty input were being created in the Appendix. The Appendix lists a Bachelor of General Studies - Criminology, a Bachelor of General Studies - Applied Communication, a Bachelor of General Studies - Foundations of Psychology and a Bachelor of General Studies - Marketing Principles.

If these were indeed new programs, faculty input would be required. However, EMU and AP entered into an amendment to the Service Agreement, which makes it clear that the listed programs are not new programs, but are rather courses that are part of a Bachelor of General Studies degree. The Amendment states:

- A. An asterisk (*) is hereby added to the “Bachelor of General Studies” Online Program identified in Addendum A with the following clarifying language inserted at the end of Addendum A:
 - Several academic areas are listed un the Bachelor of General Studies (BGS) program on Addendum A of the Contract. As a point of clarification, students must work with an advisor to create an academic schedule in order to design a plan of study for their BGS degree. These areas listed in Addendum A do not constitute separate programs and do not preclude students from taking courses in these or other areas not listed if classes are available.

Insofar as the Amendment became part of the Service Agreement, and it makes clear that new programs are not being created. Appendix A, with the Amendment, does not violate the Shared Governance Provisions of the contract. Importantly, the Bachelor of General Studies, which remains as the only bachelor program under General Studies, existed in an online format prior to the AP Service Agreement. Therefore, the CBA was not violated when the University did not engage the faculty for input relative to the Addendum.

The Association points to the October 17, 2017 workshop conducted by AP as evidence of prohibited curriculum involvement. However, the department head, not the University, arranged for the workshop. Of significance, attendance was voluntary. Based upon the practice of the parties, a violation was not established.

The Service Agreement in paragraph “A” references AP providing marketing, recruiting and promotion. This would not represent a violation. Paragraph “B” appears to include “boilerplate” language which cannot be identified as including curriculum functions as opposed to marketing ones.

Paragraph “C”, by its language, could be prohibited because it refers to academic support services. However, the language is vague and a violation based upon the language itself has not been sufficiently established. However, if paragraph “C” is utilized so as to improperly involve curriculum, there could be a violation of the Shared Governance Provision. Paragraph “D” is not identified as being a problem for the Association. Paragraph “E” does not seem to involve prohibited activities, including curriculum. This would also be true of paragraph “F”.

There is insufficient evidence to conclude that the AP Service Agreement improperly violated the Shared Governance Provisions of the collective bargaining agreement.

WHAT ARE THE ISSUES GOING FORWARD?

There are two issues involving the AP Service Agreement: the propriety of the contract on its face, and the propriety of the Service Agreement as applied. The AP Service Agreement on its face was not shown to have been improper. However, the Association can challenge particular activities under the Service Agreement in the future, should it find that AP and EMU are violating the Shared Governance Provisions of the collective bargaining agreement.

I understand the concern of some Association members, with the increase in online offerings and the concomitant involvement of AP. I also understand the University's concern for attracting students to EMU. Ultimately, if AP remains in the marketing, recruiting and promotion areas, there would not be a contract violation. If it ventures into the areas reserved for faculty input, a grievable event could potentially occur.

AWARD

1. The grievance is arbitrable.
2. For the foregoing reasons, the AP Service Agreement on its face does not violate the Shared Governance Provisions of the contract.
3. The Association is not precluded in the future from challenging actions that it believes violate the Shared Governance Provisions of the contract.

Mark J. Glazer

Mark J. Glazer
Arbitrator

Date: January 10, 2018